

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 97-0143 ST**  
**SALES AND USE TAX**

**For Tax Periods: 1996 Through 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**ISSUES**

**1. Sales and Use Tax-Sole Proprietor**

**Authority:** IC 6-8.1-5-1 (b).

Taxpayer protests his classification as a sole proprietor.

**2. Tax Administration: Best Information Available**

**Authority:** IC 6-8.1-5-4 (a), IC 6-8.1-5-4 (c), IC 6-8.1-5-1 (a).

Taxpayer protests the computation of the tax liability using the best information available.

**3. Tax Administration: Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

Taxpayer protests the imposition of a penalty.

**STATEMENT OF FACTS**

Taxpayer is a retail merchant and independent used auto dealer. After an audit, Taxpayer was assessed sales and use tax, interest and penalty. Taxpayer protested the assessment and a hearing was held. Additional facts will be provided as necessary.

**1. Sales and Use Tax-Sole Proprietor**

### **Discussion**

Taxpayer protests the classification of his business as a sole proprietorship. He asserts that he is in a partnership with his brother. Taxpayer has the burden of proving that the assessment and his classification as a sole proprietor is incorrect. IC 6-8.1-5-1 (b). Taxpayer provided no information that would establish the existence of a partnership between Taxpayer and his brother. Therefore he did not sustain his burden of proof.

### **Finding**

Taxpayer's protest is denied.

## **2. Tax Administration-Best Information Available**

### **Discussion**

Taxpayer's second point of protest concerns the calculation of his tax liability based upon the best information available. Taxpayers are required to retain books and records "so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records." IC 6-8.1-5-4 (a). Taxpayers also have a duty to present these records to authorized agents of the department in response to reasonable requests. IC 6-8.1-5-4 (c). If a taxpayer does not present adequate records for a department auditor to determine the proper tax liability, the department auditor should make a determination of the proper amount of tax liability based upon the best information available. IC 6-8.1-5-1 (a).

This audit was based on the best information available at the time of the audit. After the hearing, Taxpayer provided additional documentation.

### **Finding**

Audit is instructed to examine the documentation and calculate the proper tax liability.

## **3. Tax Administration-Penalty**

### **Discussion**

Taxpayer protests the ten percent negligence penalty imposed pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence.

Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

In this case, Taxpayer disregarded his duty to keep adequate records and present them to the department representative upon request. This constitutes negligence.

**Finding**

Taxpayer's protest is denied.

KA/PE/MR--001711